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Land and Personal Sovereignty

by Jerome Thompson

THE CHANCE TO OWN a piece of land attracted thousands of settlers to territorial Iowa a century and a half ago. Today the "American Dream" for many Americans continues to include owning property, a home, or land. In Iowa particularly, land is a major natural and economic resource, providing a sense of identity and pride. The importance of landownership can be traced back in our history as part of a cultural attitude that has been codified into law. Within this century, for example, elaborate inheritance laws have arisen by which parents pass a family farm onto their children, thereby maintaining through the generations the sense of tradition, identity, and status often associated with landownership. In the century before, the legislators who wrote our state constitution protected citizens' rights to acquire property.

Even much earlier — in the fifteenth, sixteenth, and seventeenth centuries — conquest and acquisition of land was a driving force behind European exploration and settlement in North America. Explorers claimed vast tracts of land in the name of their royal sponsors, thus extending royal sovereignty over that land, resources, and transportation routes.

That those lands were already "claimed" by the inhabitants — native Americans — was generally ignored by European monarchs and their explorers and colonists. Their justification for rejecting native claims and thus dispossessing the Indians of traditional lands was based on a cultural attitude about the correct way to use the land — an attitude that clashed with native American attitudes.

Ecology historian William Cronon explains the clash in his book *Changes in the Land*. In Europe (where the population was dense and available land was limited) individuals derived their livelihood from a specific piece of land, through crop production or animal husbandry.

Surplus agricultural goods entered a market economy as commodities. The land which had yielded the surpluses was also viewed as a commodity — something that could be bought or traded at a particular economic value. Improvements on the land increased the value.

In North America, Cronon continues, native people used the land in a different way. Taking advantage of a region's diversity of resources, a village remained mobile, moving wherever seasonal abundance showed itself, rather than living permanently on and improving a specific area. Many tribal societies combined agriculture with hunting and gathering. Men hunted, traveling the necessary distances to find the animals. Women tended plots of vegetables (an activity that could be done while also tending children). But after the crops were harvested, the village would move to where other varieties of food were available — nuts, shellfish, waterfowl, berries, or wintering herds. This mobility required that villagers limit possessions to ease travel and resettlement.

The two cultures clashed, Cronon summarizes, because European lifestyle and use of land were based on "fixity" and a view of land and surplus goods as commodities, whereas the native American lifestyle was generally based on mobility and diversity of resources, in which surpluses were shared through kinship customs. Indians pared down their possessions so there was less to carry with them in their mobile lifestyle; what they needed could generally be made from natural materials at hand. But Europeans, for whom material possessions indicated status and a high standard of living, perceived the Indians, with their few possessions, to be living in poverty. Europeans judged the seemingly impoverished Indians as "undeserving" of this land of plenty — and hence rejected their claims.

Historian Wilcomb Washburn has traced

this justification of dispossessing the Indians back to European philosophers as early as Sir Thomas More (in *Utopia* in 1516) and John Locke (in *An Essay Concerning the True Original, Extent and End of Civil Government* in 1690); both wrote on the justice of expansion. Although some explorers and colonists (notably Sir Walter Raleigh and Roger Williams) recognized this justification as decidedly unjust, the attitude held sway during European conquest and colonialism and continued into American thought and government. For instance, Washburn quotes Theodore Roosevelt in his 1889 *Winning of the West*: "settler and pioneer have at bottom had justice on their side; this great continent could not have been kept as nothing but a game preserve for squalid savages."

This cultural clash resulted in widespread rejection of native land claims and centuries of conflicts. The Euro-American cultural judgment about the use of land and the individual's right to own a specific piece of land became codified into law — often in the form of treaties that extinguished the native land claims and removed most tribes from traditional lands or significantly reduced the extent of those lands.

JUST AS EUROPEAN monarchs and their colonists had wanted to own land, so did Americans. To meet this need, the federal government created elaborate systems of acquiring the land from native tribes, and then organizing and dividing it so that individual citizens might eventually acquire it for themselves. By passing the Northwest Ordinance in 1787, Congress promised the settlers eyeing the huge Northwest Territory an orderly way of governing this frontier. In his study of the ordinance, Peter S. Onuf writes, "Plans for territorial government culminating in the Northwest Ordinance can only be understood in relation to land policy: the price of lands, their location, and the process of acquiring them determined who would settle the national domain and the kind of communities they would form."

The ordinance immediately addresses the issue of property ownership: Preceded only by a one-sentence introduction, the second paragraph launches into procedures for dividing

property of persons dying intestate. But more important, the ordinance states that in order for residents in the new territory to vote or to serve in territorial government, they must first be landowners. For example, the governor, appointed by Congress, must "reside in the district and have a free-hold estate therein, in one thousand acres of land." Judges had to own five hundred acres, as did members of the legislative council appointed by Congress. To serve as a representative, one had to own two hundred acres. To vote, one had to own fifty acres. Quite simply, to have a hand in ruling people and the land, one had to own land. In determining a territory's destiny, landownership was vital.

Landownership as a voting requirement did not carry through into territorial organizational laws that affected Iowa, nor to Iowa's state constitution approved in 1846. But the lawmakers who wrote the constitution did not neglect the importance of landownership to citizens. Article II of the state constitution (the Bill of Rights) begins: "All men are, by nature, free and independent, and have certain inalienable rights — among which are enjoying and defending life and liberty, *acquiring, possessing and protecting property*, and pursuing and obtaining safety and happiness" (italics added).

Iowans have exercised their constitutional right to acquire and possess property vigorously and happily. But when property is tragically lost, the sorrow of the owners is great. The sense of loss is emotional — not just economic — because dreams are shattered too. This has been witnessed in the recent farm crisis in Iowa and throughout the United States, which has driven many farm families from traditional landholdings. These victims of poor economic times have expressed a strong sense of loss. When land is lost, a culturally ingrained right seems violated.

THE SORROW and loss that native Americans must have felt when they were removed from Iowa by treaty came from a different relationship to the land than individual ownership. Native Americans' philosophy of land rights was rooted in their religious beliefs that include the



DUREN WARD COLLECTION, SHS-HOWA CITY

A Mesquakie wigwag of woven mats was home to Na-na-wa-chi.

unity of the natural world and the human world. One world did not master the other.

Land was held communally by the tribe. "What the Indians owned — or, more precisely, what their villages gave them claim to — was not the land but the things that were on the land during the various seasons of the year," historian Cronon explains. "An individual's or family's rights to property were defined by the community which recognized those rights," he continues, "whereas the community's territorial claims were made in opposition to those of other sovereign groups."

Francis La Flesche, an Omaha Indian, writes, "The White people speak of the country at this period [of their settlement] as 'a wilderness,' as though it was an empty tract without human interest or history. To us Indians it was as clearly defined then as it is today; we knew the boundaries of tribal lands, those of our friends and those of our foes." Before and during Iowa's territorial period, Iowa lands were home, at least temporarily, to several sovereign groups — the Sauk, Mesquakie (Fox), eastern divisions of the Dakota (Sioux), Winnebago, Pottawatomie, Omaha, Otoes, and Missouris. Tribes recognized boundaries and areas of land used by other tribes.

The key word here is "used." Land provided a tribe's living. The animals that lived on the land were hunted for food, clothing, tools, and weapons. The plants that grew there were harvested from gardens or gathered from the wild. Stone, wood, fiber, and clay were used for making tools and other equipment. All of these resources were used and were therefore owned

— but not the land. Tribes did not perceive an economic value to land; it was not a commodity. No one could own or sell the land, although one could hold rights to certain activities on that land.

In Iowa, the rights of the Mesquakie tribe were extinguished through a series of treaties enacted between 1804 and 1842. The United States government paid the Mesquakie in cash and goods as they gave up their claims to the land in Iowa.

The 1842 treaty required that the Mesquakie be removed from Iowa by 1845. But the Mesquakie did not want to leave their land. Groups of Mesquakie fled from the Racoon River Agency near Fort Des Moines into the Des Moines River valley, hoping to avoid relocation to lands in Kansas. Troops were dispatched to capture and force the Mesquakie to move. On December 10, 1845, Lieutenant R.S. Granger carved the following inscription on a rock along the Des Moines River in Boone County: "Found 200 Indians Hid and Around This Mound They Cried, No Go! No Go! But We Took Them to Ft. D[es Moines]."

In 1856 the Mesquakie, as a tribe, chose to return to Iowa and began to buy land in the state. Today the Mesquakie live on a settlement of some 3,000 acres of land in Tama County, purchased in parcels by the tribe over the last 132 years. The land is owned by the tribe as a whole, not individually. Significantly, the Mesquakie used the federal government's legal system of land purchases and individual ownership to maintain their own cultural view of communal sovereignty.

AN AERIAL VIEW of Iowa is often likened to an orderly and rich patchwork quilt. Square or rectangular fields and roads intersecting at right angles are the products of a significant legal system for organizing land. Without this two-century-old system, words like section, quarter-section, square mile, and south forty would be absent from our lexicon of land terms.

This system of regularity is a product of the Land Ordinance of 1785. Preceding the Northwest Ordinance by two years, this act set forth a system of surveying, dividing, and disposing of "territory ceded by individual States to the

United States which has been purchased of the Indian inhabitants." Federally hired surveyors were to "divide the said territory into townships of six miles square, by lines running due north and south and others crossing these at right angles." The townships "shall be marked by subdivisions into lots of one square mile or 640 acres." With these orders, the land in the Northwest Territory (which became Ohio, Indiana, Illinois, Michigan, and Wisconsin) was divided so that individual citizens might be able to afford portions. Transactions could be accurately recorded by the location of the land on an imaginary grid.

Once Iowa received territorial status, it, too, was surveyed and divided. Today roads and edges of fields are physical manifestations of these small, affordable portions divided up by the government and bought by individuals. It is these boundary lines of privately owned property that provide the patchwork quality.

According to the Land Ordinance of 1785, lands had to be organized — namely, surveyed — before they could be sold to the public. But the slow, tedious process of surveying often took years to complete. For instance, some of the lands opened in 1845/46 by the 1842 Sauk and Mesquakie treaty were not surveyed until the 1850s. Ira Cook, a government surveyor, wrote in his memoirs that he began surveying ten townships in present-day Carroll and Sac counties in September 1852 — seven years after the area had been opened.

Settlers coming to territorial Iowa did not want to wait for the official surveying as required by law. They moved onto the public domain in spite of the law and began staking claims. In September 1842 the *Bloomington Herald* reported that along the Des Moines River (on land opened under an 1837 treaty) "almost every tree bore the initials of some adventurous pioneer, and by way of indicating to the observer the right to title by which it was to be and would be defended, the representation of a bowie knife, a brace of pistols (crossed at the muzzle), or a rifle was cut in a tree above or below the name of the claimant."

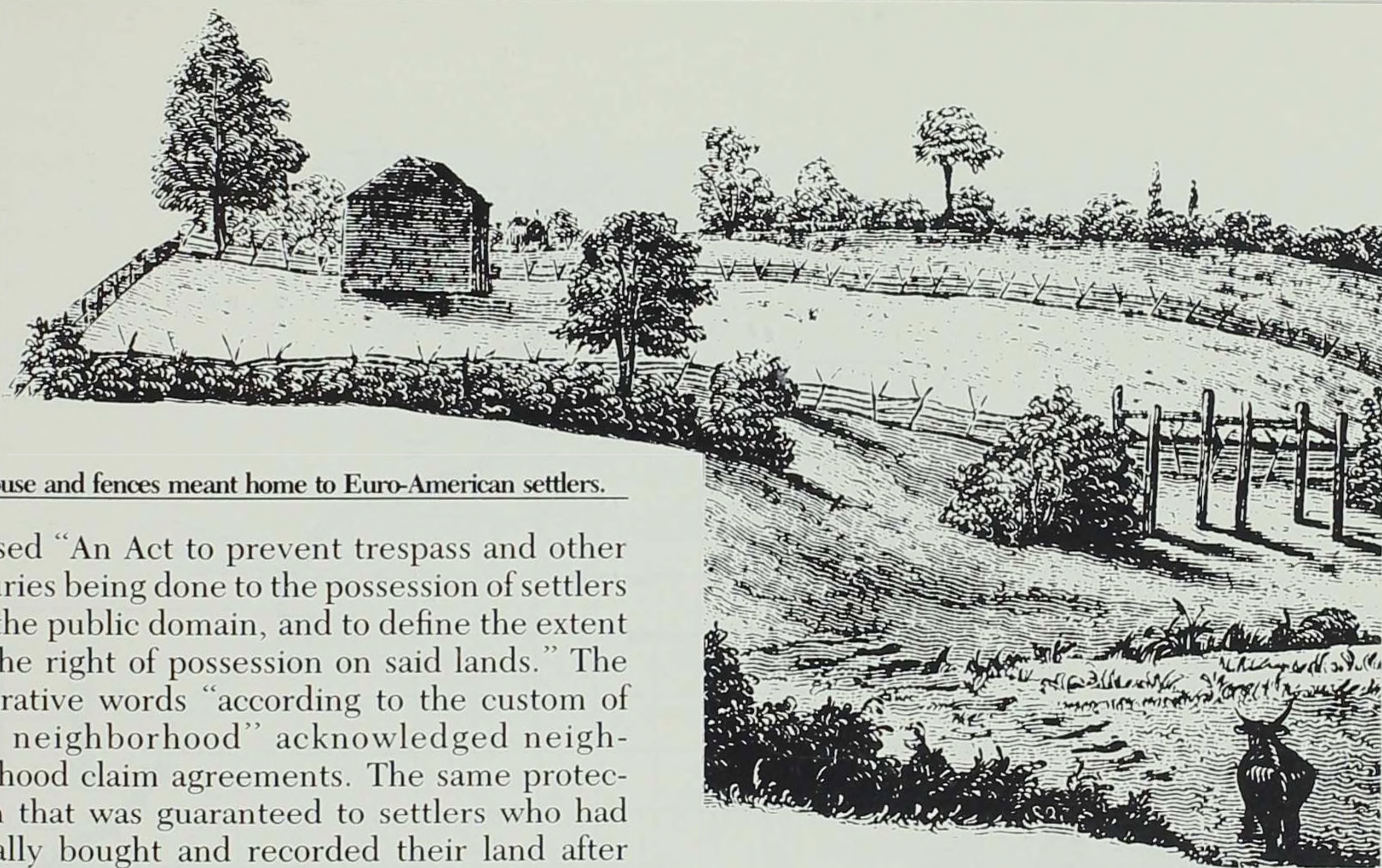
One such "adventurous pioneer," Aristarchus Cone, ventured to Iowa in 1838 to "go into the Farming business" with his partner, Richard Lord. Cone described stumbling

onto claims that were marked by "improvements" such as a log pen or a patch of corn or potatoes. These "improvements" indicated an individual's intent to settle and buy that land. Although the claimant might be absent, the improvements "encouraged" newcomers to seek land elsewhere.

Following the custom, Cone and Lord made similar improvements. As Cone later described it, "I staked off my claim (The Land had not been surveyed at this time only into Townships six miles square) and went to the recorder of Claims living about 8 miles distant near the mouth of the Cedar River and had a Record made of it. My Friend Lord took a claim near mine we paid 50 cts each for Recording our Claimes this was according to squatter rule there being not much Law or Gospel here." Cone continued, "The Land was run off into section[s] soon after we came here and we conformed our claimes to the sections Lines I put up a rail pen in the shape of a House on my claim had it noted on the surveyors Book and returned to the General Land Office at Washington with my name. . . . This fully confirmed my sovereignty as a squatter on the Public Domain."

SUCH INFORMAL — and extralegal — systems of organizing and protecting claims were frequently implemented. On a local basis people agreed by formal charter how much land could be claimed and how claims would be marked and improved, and then forced neighbors to not bid against each other when the land was officially auctioned after federal surveying. These "claim clubs" developed out of local fear that monied land speculators might try to wrest club members' illegal claims from them at the public sales following surveying.

Recognizing that settlers were not waiting for desirable land to be fully surveyed before claiming it, lawmakers took action. Whether passed in the interest of their constituents or as an attempt to make a widespread illegal action legal, preemption laws were passed on a territorial and federal level to regulate and facilitate the claiming process. In 1839, for example, claim clubs became legal institutions by allusion when the Iowa Territorial Assembly



A house and fences meant home to Euro-American settlers.

passed "An Act to prevent trespass and other injuries being done to the possession of settlers on the public domain, and to define the extent of the right of possession on said lands." The operative words "according to the custom of the neighborhood" acknowledged neighborhood claim agreements. The same protection that was guaranteed to settlers who had legally bought and recorded their land after surveying — namely, freedom from trespass, forcible detainer, and ejectment — were now guaranteed to settlers on the public domain. In September 1841, Congress granted those who had settled on public lands after June 1840 the right to maintain their claims (not exceeding 160 acres) and purchase them at public sales.

THE BOUNDARIES that define a piece of land are respected as messages that that area is claimed by someone. Native Americans chose natural landmarks such as rivers and creeks as boundaries announcing tribal use of the land that lay between the waterways. In territorial Iowa, eager settlers carved initials on trees to mark off the best land they could find. Federal surveyors, ignoring the twist of a river or the quality of land, duly numbered off sections and lots on township maps while sighting through their compasses. Today Iowa's fence-line boundaries are commonly recognized and respected and are formalized in legal documents of ownership. In any situation where people live and work, boundaries are a mental and mathematical concept tangibly expressed and culturally respected — in the plat books in a county courthouse, by a picket fence or hedge on a city property lot line, by interior walls dividing up offices or apartments in a building.

Boundaries command this respect because they are statements of ownership. Acquisition

and claiming of property by a variety of means and justifications has been part of the Euro-American experience for nearly five hundred years. Acquisition and possession of property is a basic freedom granted Iowans under the state constitution. Within boundaries and on one's property a person is free (within the law) to pursue the right to obtain happiness and security in one's own way. Having property may not be happiness, but it may enable happiness. Having property won't make you free, but it might let you feel free.

By the prevailing cultural definition in this nation, owning property is part of the "American Dream." Perhaps that is why when people lose their land, the loss is emotional. When land is lost, a culturally ingrained right may seem to be lost too. The creators of the documents that governed the acquisition, division, and sale of land acknowledged and met Euro-Americans' need to possess their individual space. □

NOTE ON SOURCES

Secondary sources cited are William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York, 1983); Francis La Flesche, *The Middle Five* (Madison, 1963); Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, 1987); Mildred Throne, ed., "The Memories of Aristarchus Cone," *Iowa Journal of History and Politics* (Jan. 1951); and Wilcomb E. Washburn, "The Moral and Legal Justifications for Dispossessing the Indians," in *Seventeenth-Century America*, ed. James Morton Smith (Chapel Hill, 1959).

Map
OF THE SURVEYED PART
OF
IOWA TERRITORY,

FROM THE OFFICIAL PLATS;
Defining all the TOWNSHIPS & COUNTIES, and being the
only Map yet published, exhibiting the location

OF
IOWA CITY
the permanent Seat of Government of the Territory,
as established by the Commissioners 4th May, 1839.

Map compiled and published by
John H. Smith
of Sinsper, Wisconsin.



Ten months after Iowa achieved territorial status, this 1839 map boasted of "being the only Map yet published exhibiting the location of Iowa City, the permanent Seat of Government of the Territory." Nevertheless, not until the fall of 1842 did the territorial legislature convene in the new stone capitol built in Iowa City.

A REGULATED SOCIETY

by David Walker

HALF A CENTURY before Iowa gained territorial status in 1838, years before Iowa and the rest of the Louisiana Purchase even became part of the United States, the fundamental governing structure of new territories was being determined in New York City. In 1787, while convention delegates from a dozen states hammered out the Constitution in Philadelphia, the U.S. Congress convened in New York.

That summer the land west of the Mississippi was not on the minds of the congressmen meeting in New York City. How to govern the Northwest Territory, however, was on their minds, and by what system new states would enter the Union from that huge territory northwest of the Ohio River and east of the Mississippi. On July 13 they solved this problem by passing the Northwest Ordinance, one of the most fundamental documents in America's political history. The ordinance would be used fifty-one years later as the foundation of territorial government in the new Iowa Territory. In deciding matters of morals and suffrage, schoolhouses and slavery, frontier lawmakers in territorial Iowa would refer back to the Northwest Ordinance.

Originally included in the Louisiana Purchase, the area we now call Iowa became part of the Missouri Territory in 1812 when Louisiana gained statehood (the first to be admitted from the Louisiana Purchase). In 1821 Missouri became a state, and Iowa became known only as the "Iowa District," not part of any recognized territory. During all this time there were few if any permanent Euro-American settlers in Iowa, making the need for a governmental

structure minimal. But in 1833, after the forced removal of the Sauk and Fox (Mesquakie) tribes from eastern Iowa by June 1, settlers began crossing the Mississippi into the Black Hawk Purchase.

The following year the Iowa District was placed under the jurisdiction of the Michigan Territory. The district was divided into two enormous counties, Du Buque and De Moine, at a line drawn west from Rock Island. Thus, in the frontier towns of Burlington and Dubuque federal and territorial laws were enforced, criminal and civil cases were tried, and land claims were registered.

As Michigan approached statehood in 1836, the Iowa District joined the newly created Wisconsin Territory. Settlement in the Iowa part of Wisconsin Territory grew rapidly, and residents assumed an active role in territorial government. Eighteen representatives from Du Buque and De Moine counties sat in the Wisconsin territorial legislature. At the first session the legislators met in the isolated lead-mining community of Belmont (now in southwestern Wisconsin); the second session convened in Burlington. Although residents in each of the river towns of Dubuque, Bellevue, and Burlington actively lobbied to become the permanent seat of government, the political influence and land manipulations of lawyer/speculator James Doty convinced lawmakers to establish the territorial capital in Madison.

Arguing that a rapidly growing population did not want to be so far removed from the seat of government, a group of Iowans soon established committees to pursue separate territorial status. Supportive resolutions were introduced in Congress by Territorial Delegate

George W. Jones (from Dubuque) and Missouri senator Lewis F. Linn. Despite partisan squabbles and the nationally divisive issue of slavery expansion, both houses of Congress passed the necessary legislation and sent it on to the president. On June 12, 1838, Martin Van Buren signed the law (the Iowa Organic Act). On July 4, 1838, the land we now know as Iowa, as well as half of present-day Minnesota and part of the Dakotas, was officially recognized as Iowa Territory.

BY THIS TIME Congress had modified the rigid stages of political organization contained in the Northwest Ordinance, dispensing with the earlier requirement that there be 5,000 free adult males before a legislature could be elected. Federal officials were quickly appointed by the president and confirmed by Congress. Presi-

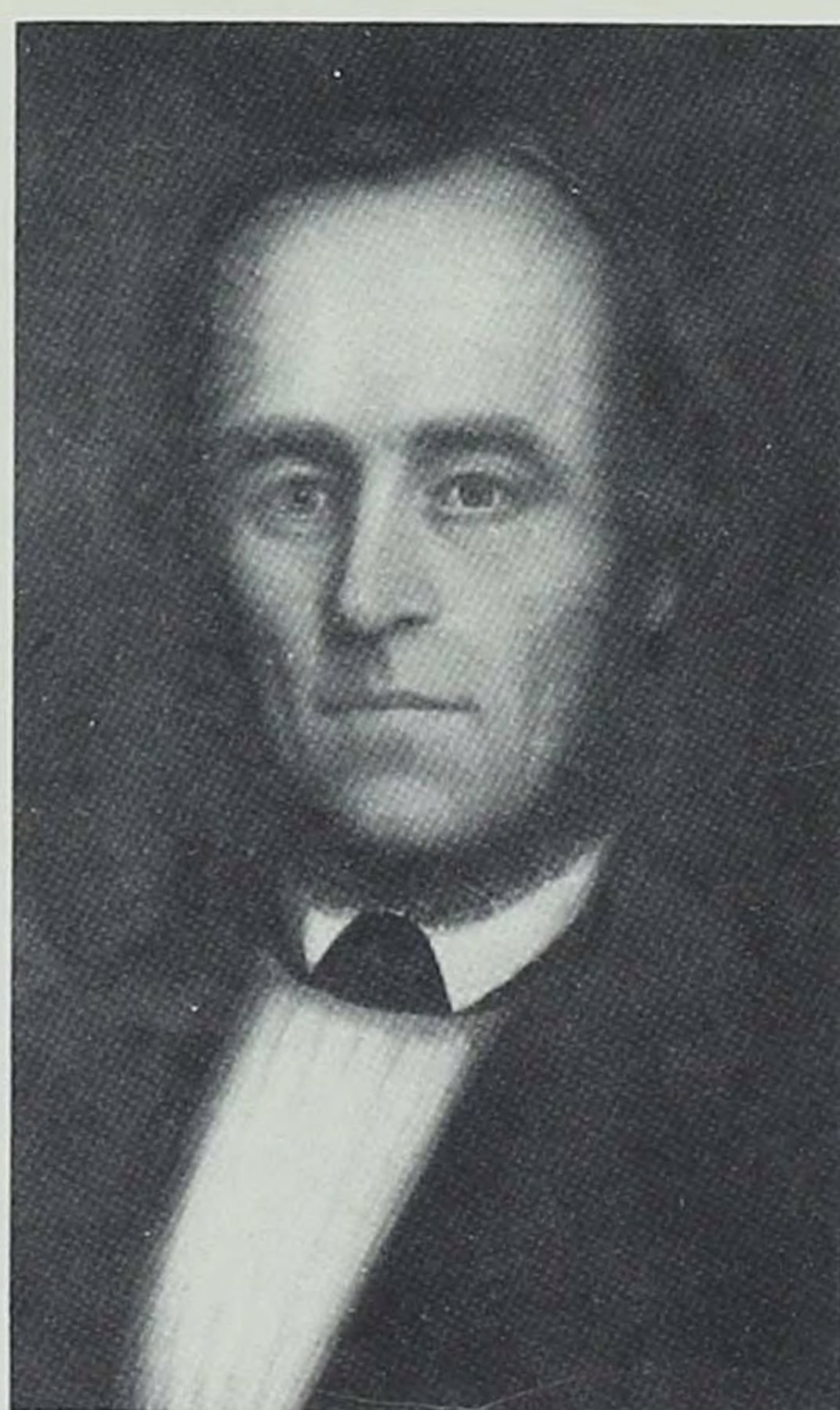
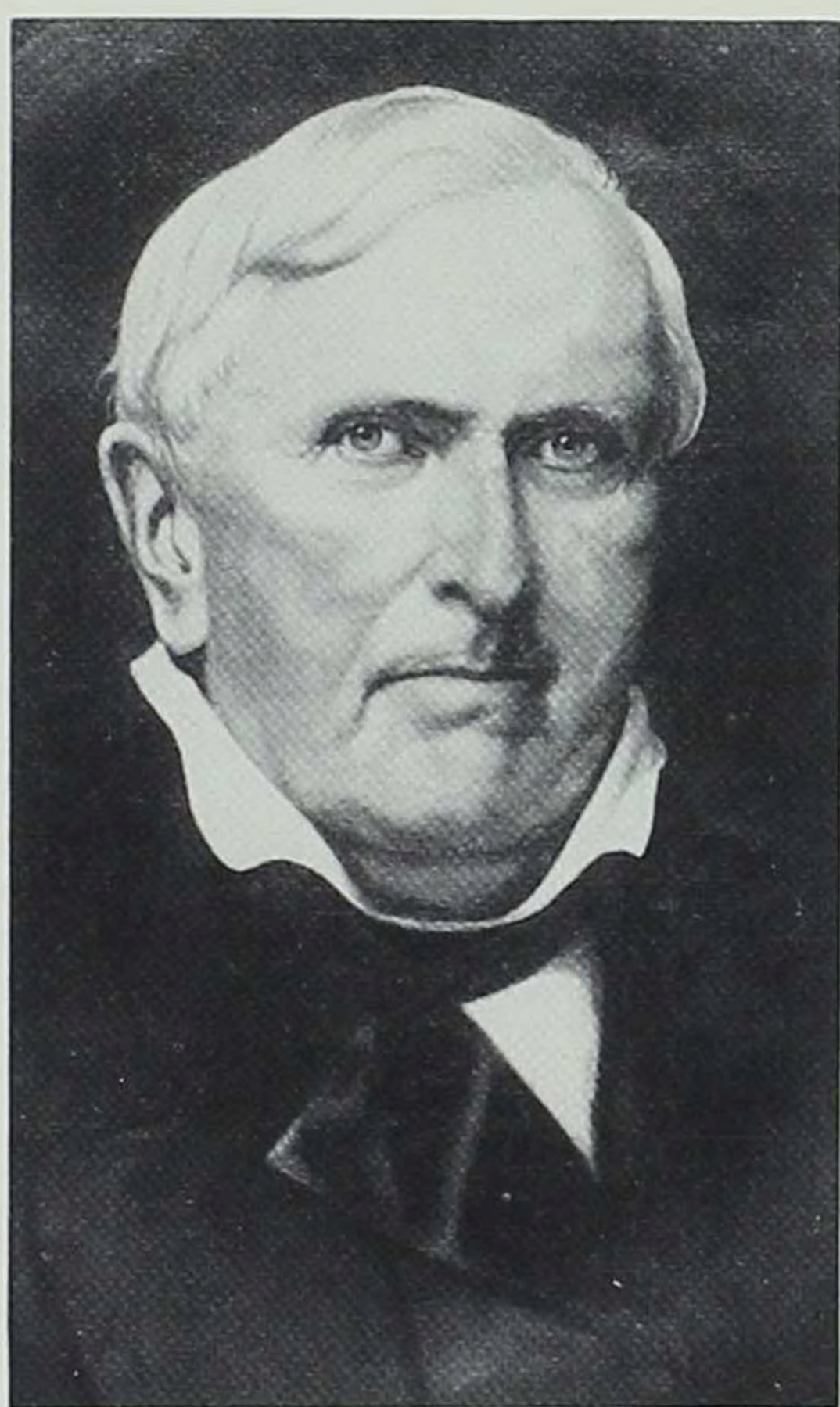
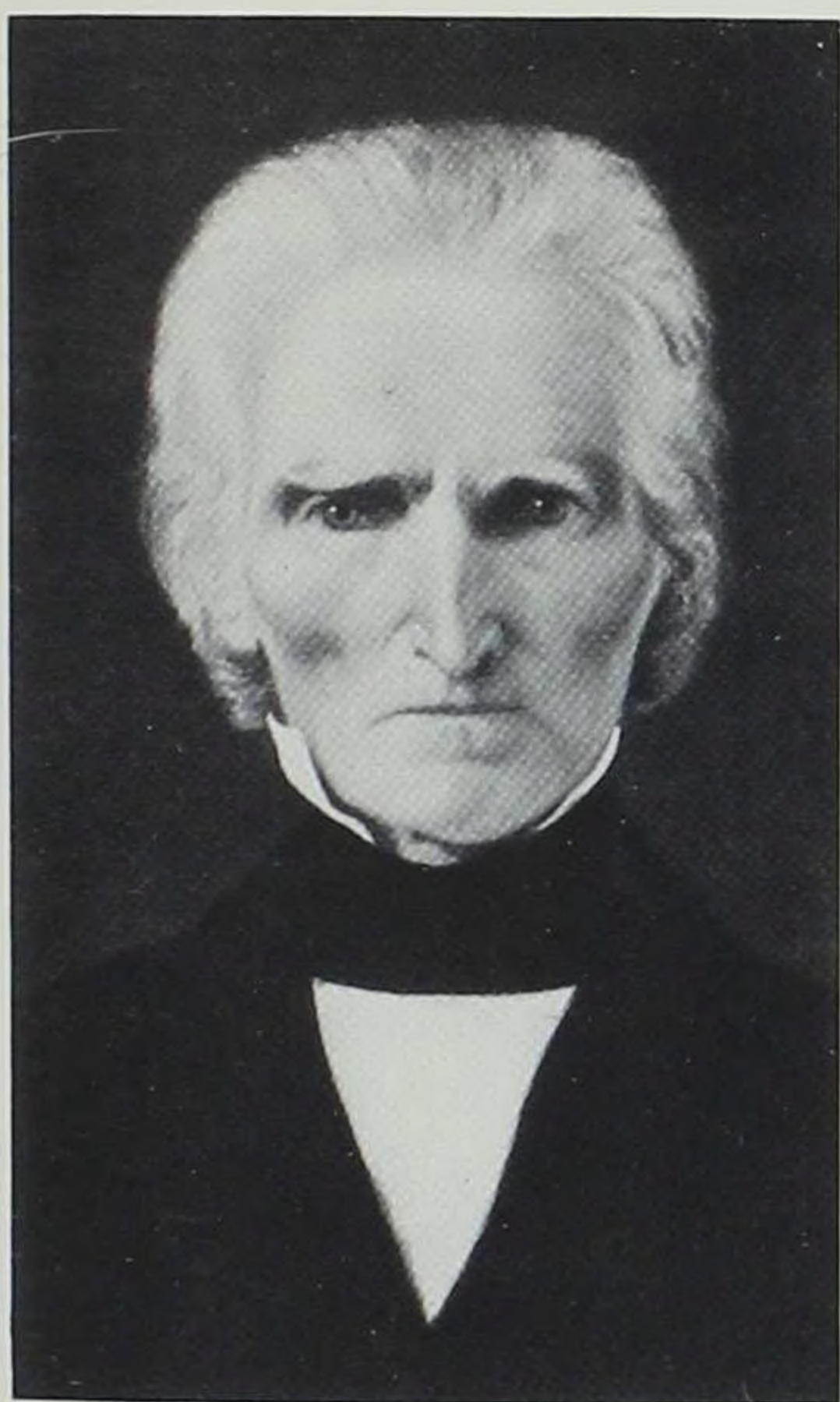


Iowa's first territorial assembly convened in Burlington's Methodist Church. Later called "Old Zion," the church appears above in a much later photo.

dent Van Buren appointed experienced Democrat and former Ohio governor Robert Lucas as the territory's first executive. A Quaker turned Methodist, Lucas had trained as a surveyor before taking his young family from western Virginia to the Ohio frontier. Following experience in both houses of the Ohio legislature, he had served two terms as governor. In that office, Lucas had advocated free public schools, strengthened the militia, and battled with Michigan authorities over a controversial boundary (a similar challenge would confront him as Iowa's governor).

Under the Iowa Organic Act, which was built on the Northwest Ordinance, the governor held executive power and authority as commander-in-chief of the militia and superintendent of Indian affairs. Upon his arrival at Burlington by way of steamboat in August 1838, Governor Lucas called for a census to be taken, established legislative districts, and set an election date. Although this and other executive prerogatives had already been exercised by the appointed territorial secretary, a partisan Jacksonian Democrat from Pennsylvania named William B. Conway, Lucas quickly asserted gubernatorial authority; he would continue to quarrel openly with this young rival.

Governor Lucas also appointed district and supreme court judges, justices of the peace, sheriffs, militia officers, and county surveyors. Legislative power was to be vested in the governor and a bicameral legislative assembly. The assembly would be composed of a Council of thirteen members elected biennially and a House of Representatives of twenty-six members elected annually. For election to either, one had to reside in the appropriate district and be able to vote — a right held by "every free white male citizen of the United States, above the age of twenty-one years." All lawmakers would enjoy identical privileges and immunities and receive equal pay — three dollars per day in annual session (which could not exceed seventy-five days) and three dollars for every twenty miles of travel between home and the capital. The Organic Act further specified that lawmakers could not simultaneously hold a regular military commission, nor could they hold any office created by the same assembly



Iowa's three territorial governors were presidential appointees. Democrat Robert Lucas (left) served from 1838 to 1841; Whig John Chambers (middle), from 1841 to 1845. He was succeeded by Democrat James Clarke (right), 1845-1846.

branch in which they served or for one year thereafter.

Following the election, the first Iowa territorial assembly convened on November 12, 1838, in Burlington's Methodist Church (later called Old Zion). Although Democrats held nearly a two-to-one margin in the House (but only one vote difference in the Council), Whigs assumed two leadership positions. Lee County merchant Jesse B. Browne, who at six feet seven inches towered over his colleagues, presided in the Council, and William H. Wallace of Henry County was Speaker of the House, the only Whig to ever hold that office.

PARTISAN POLITICAL struggles dominated each of the eight annual assemblies and two extra sessions during the territorial period. The assemblies convened in Burlington until moving permanently to Iowa City in 1842. Despite success for both Democrats and Whigs in presidential elections (which led to new federal appointees in Iowa), the party of Jackson and Van Buren nevertheless dominated every session of the lawmakers, each constitutional con-

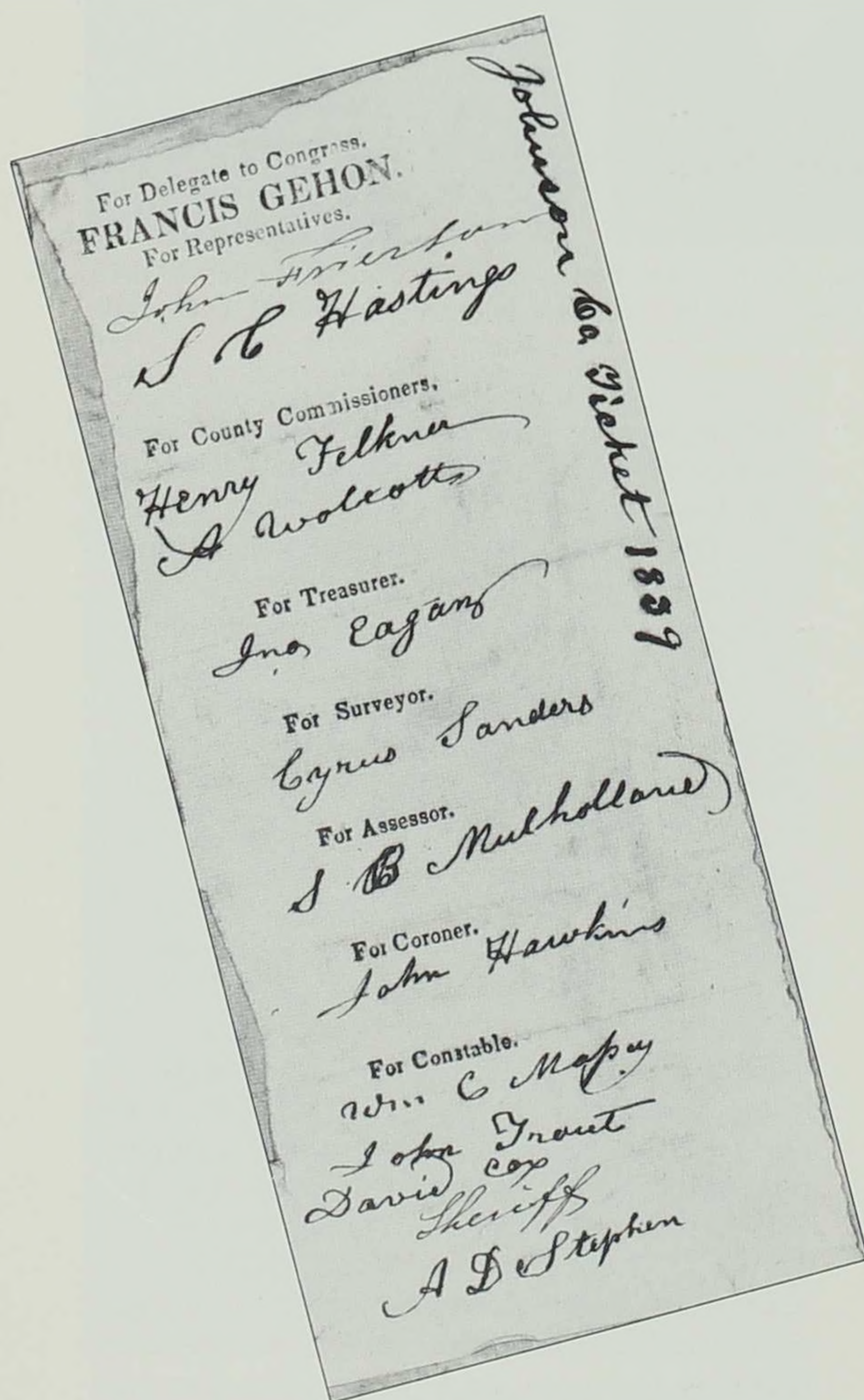
vention, and the election of both congressional delegates. As a result, territorial statutes do not reflect such major Whig principles as support for a national banking system and circulation of a uniform paper currency.

Voters had elected the initial legislators following campaigns revolving around such issues as county seat location, temperance, internal improvements, and personal notoriety. Local issues continued to dominate the election of the second assembly, but party affiliation also exerted some influence. From 1840 on, however, partisan organization became extremely important. The feverish excitement generated by presidential campaigns during the 1840s — including mass rallies, barbecues, and parades — contributed significantly to coalescing political organization on the Iowa frontier. Each party established central committees, correspondence networks, and local clubs.

In order to maintain and expand voter solidarity, both parties depended upon openly supportive newspaper editors from the two capital cities. Democrats relied on the *Burlington Gazette* and the *Iowa Capital Reporter*, whereas Whig issues were reflected on the pages of the *Hawk-Eye* and *Iowa Patriot*.

and the *Iowa Standard*. This highly charged, partisan atmosphere is captured in the following verse popular among Whigs in the 1844 election:

Ye Whigs who fought the noble fight,
For Tip and Tyler too,
Remember that we've met this day
To organize anew;
And by the blessings of that power,
Which smiled on those of yore,
We'll lay the traitor on his back,
And Martin on the floor.



1839 ballot from Johnson County

THE ORGANIC ACT provided that the lawmakers' authority extended "to all rightful subjects of legislation." This seemingly unlimited power, however, was subject to implied and articulated restrictions. First, a basic assumption was that laws of the United States extended over the territory and its inhabitants. Second, the House Judiciary Committee listed thirty-four statutes from territorial government in Michigan and Wisconsin that remained in effect in Iowa. Most related to property rights and criminal law and would subsequently be altered or replaced. In some cases, such as a law regulating marriage (by legally recognizing those marriages conducted by ordained ministers), it remained the only statute on a particular issue. Specific prohibitions did exist: the legislature was restricted from interfering with laws disposing of the public domain, from taxing federal property, and from establishing a higher tax rate on the land and property of non-residents. For the first year the governor held absolute veto power, and all territorial laws were subject to Congressional approval.

Throughout Iowa's eight years of territorial government, the legislators took action on matters that affected territorial growth and development, but they also acted on particular concerns of communities, interest groups, and individuals. This reached its extreme in the legislature's granting of divorces to individual couples. The vast majority of territorial statutes, however, established and administered departments and offices of government. These somewhat routine but often lengthy statutes organized a board of commissioners in each county, defined crimes and punishment and regulated criminal proceedings, organized and governed the militia, and established the election of sheriffs and constables. As the first governor Lucas was responsible for inaugurating a census for apportioning legislative districts, establishing the time and place of elections, and creating judicial districts and selecting the justices, but thereafter most organizational activities reverted to the legislature.

A property tax funded the cost of operating the territorial government. Initially 5 percent of all revenue collected in each county was set aside for administrative operation. In 1841,



Within the chambers of Old Capitol, territorial lawmakers debated the pros and cons of joining the Union. This image dates to 1853; the occasion was a Johnson County fair. In 1857 the state capital was moved to Des Moines.

however, the territorial tax was separated from county revenue, but county commissioners continued to levy and collect the tax.

Numerous legislative acts sought to stimulate economic growth and to protect property rights. Lawmakers incorporated and chartered individual companies to construct, operate, and maintain roads, ferries, mills, dams, steamboats, and other means of transportation. Agriculture and household manufactures were encouraged through funds distributed to county agricultural organizations and the Iowa Territorial Agricultural Society. Rights to real and personal property were protected in wills

and estate settlements. Widows whose husbands died intestate were allowed to retain certain possessions that were exempt from debt obligations, namely, "one bed and bedding, the wearing apparel of herself and family, one milch cow and calf, her saddle and bridle, one horse, household and kitchen furniture sufficient for herself and family, and provisions for the same for one year."

In a somewhat related matter, the legislature made an interesting distinction related to property settlement in divorces. If the wife committed adultery, her husband would control not only jointly held property, but also her



Currency from Miners' Bank of Dubuque

real estate during his lifetime. A judge would decide if the wife would receive any "subsistence allowance." If, on the other hand, the husband committed adultery, the wife would receive all of her "land and inheritance," one half of his personal estate, and a court-determined lifelong alimony.

The most contentious economic issue revolved around the existence of banks. In late 1836 the Wisconsin Territory legislature had authorized formation of the Miners' Bank of Dubuque. The bank quickly experienced serious financial difficulty, accelerated in part by management activities and by the general anti-bank stance of Democratic administrations in Washington, D.C. (During the 1830s President Jackson carried out a bitter struggle against the national banking system and its circulation of paper currency. A wave of speculation in western lands and overly ambitious state transportation projects flooded the nation with bank notes. This, in turn, accelerated public suspicion of the fluctuating, nonregulated value of paper dollars.)

Triggered by numerous economic issues (including Jackson's feud against banks), the panic of 1837 and enforcement of the Specie Circular (which required individuals to use only gold and silver when buying federal land) led to widespread depression. Especially detrimental in Iowa, national fiscal policies con-

vinced citizens from throughout the territory to encourage several legislative investigations and attempts to revoke the Miners' Bank charter. The final devastating blow came on March 29, 1841, when Miners' Bank suspended all specie payments for three years — an action that directly affected investors in bank stock, and indirectly led to a total lack of public confidence in the entire institution.

The issue of banks was raised in the 1844 and 1846 constitutional conventions and elicited bitter partisan rhetoric. Most Democratic delegates at the first convention favored repeal of the Miners' Bank charter and a prohibition on the establishment of future banks. But conservative Democrats led by ex-governor Lucas joined the Whigs in supporting a provision that each bank charter had to be approved by voters in a general election. Two years later, with Democrats more unified and in complete control of the convention, the 1846 constitution specifically prohibited the creation of "corporations with banking privileges." (Meanwhile, in May 1845 the legislature had revoked the Miners' Bank charter. District court judges had appointed two trustees to sell all bank property and collect outstanding debts.)

TERRITORIAL LAWMAKERS also sought to protect individual rights. The Organic Act included a brief, one-sentence bill of rights, declaring that "the inhabitants of said Territory shall be entitled to all rights, privileges, and immu-

nities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants." By implication, Iowa residents retained rights specified in the Northwest Ordinance and the first ten amendments to the U.S. Constitution.

The 1844 and 1846 Iowa constitutions also included a lengthy bill of rights, but the legislature went further in addressing specific issues. The Northwest Ordinance had affirmed that "religion, morality and knowledge" were essential ingredients for establishing good government; therefore "schools and the means of education shall forever be encouraged." In the Land Ordinance of 1785 the Confederation Congress had already provided an incentive: the proceeds from the sale of one section of each surveyed township were to be set aside "for the maintenance of public schools within the said township."

Lucas stressed this link between townships and public schools. In his initial address to the legislature in 1838, he declared, "There is no subject to which I wish to call your attention more emphatically, than the subject of establishing, at the commencement of our political existence, a well digested system of common schools."

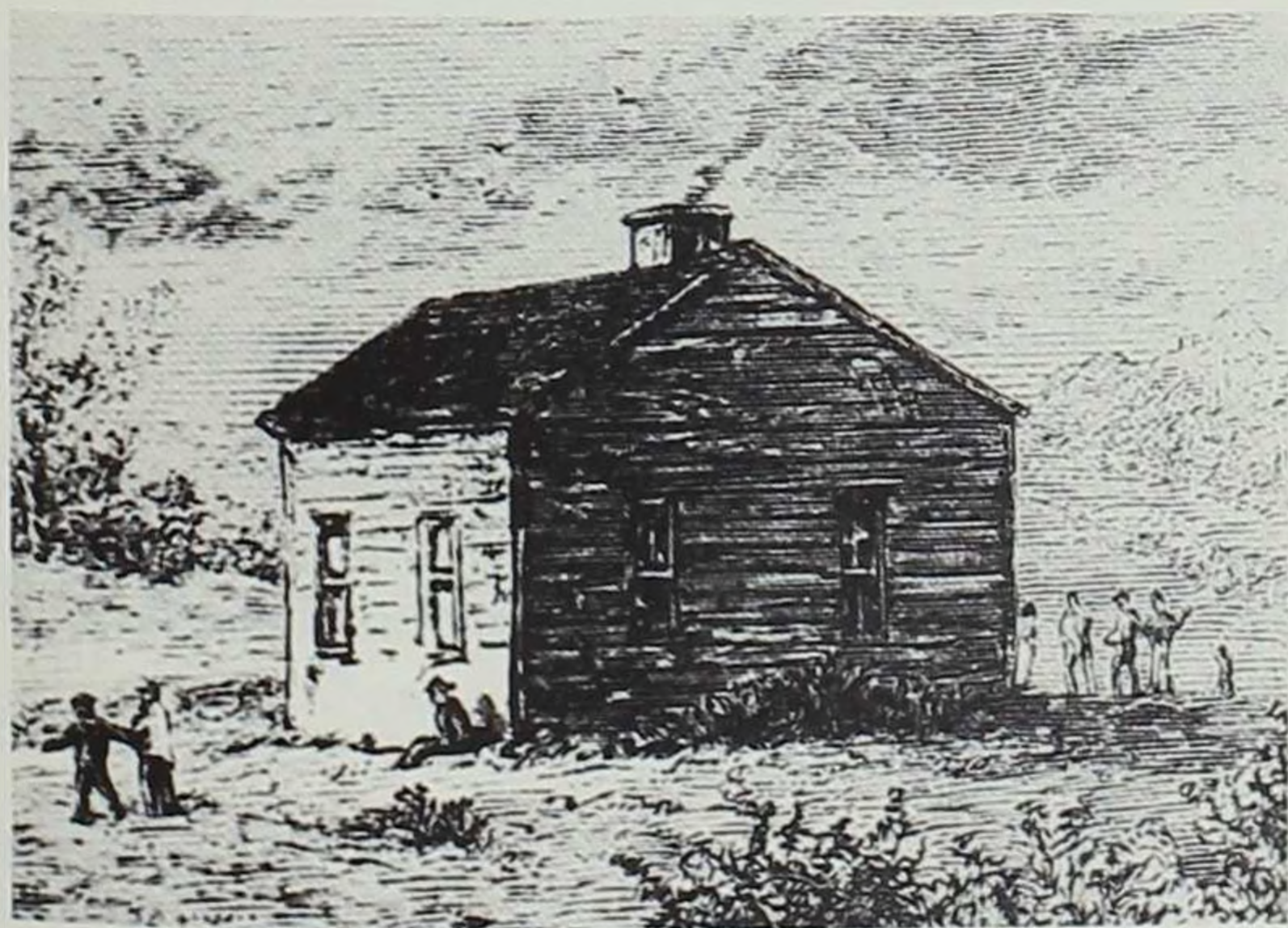
The assembly responded by calling for the creation of common schools in each county, but they placed organizational responsibility in the hands of local officials. The schools were to be "open and free for every class of white citizens" between four and twenty-one years old. In 1841 the governor was instructed to appoint a Superintendent of Public Instruction for a

three-year term, but the position was abolished in the next legislative session. Although territorial lawmakers incorporated several academies, Iowa's school system would not be fully developed until after statehood.

The frontier politicians also addressed issues of religion and morality. Statutes called for the punishment of individuals selling liquor to Indians or "unwholesome liquor and provisions" to any resident; participants in a duel were heavily fined and denied the right to vote or hold office; and debt imprisonment was abolished. Anyone over fourteen caught "rioting, quarreling, fishing, shooting, or at common labor" on Sunday was penalized. A maximum fine of fifty dollars could be levied against anyone disrupting people "assembled together for the purpose of worshipping" by swearing, disorderly or immoral conduct, or by dispensing liquor within two miles of the congregation.

SUFFRAGE, considered a basic privilege in any democratic society, was guaranteed by the Organic Act; "every white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant . . . at the time of [territorial] organization, shall be entitled to vote at the first election." For subsequent elections the legislature stated qualifications through a single, federally imposed limitation: "the right of suffrage shall be exercised only by citizens of the United States." Statute law and the proposed constitutions of 1844 and 1846 added more voter qualifications by requiring written ballots and Iowa residence of six months and county residence of twenty, then later, thirty days before the election. Duly naturalized immigrants (provided they were also white males over twenty-one) could also vote. Military personnel stationed in Iowa, however, were non-residents. The law disenfranchised an "idiot, or insane person, or persons convicted of any infamous crime"; such individuals could not vote, hold office, serve on juries, or provide testimony.

The volatile national issues of slavery and



Lucas wanted public schools established in all townships.

race relations played a continuing role in territorial Iowa. The Northwest Ordinance declared that "neither slavery nor involuntary servitude" should exist in the region. In addition, the Missouri Compromise specifically prohibited slavery in the area later organized as Iowa Territory. The proposed state constitu-

tions explicitly stated that "neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated."

This seemingly unquestioned antislavery attitude, although still subject to historical debate, is somewhat misleading. Like the vast majority of Northerners, nearly all territorial Iowans either actively or passively exhibited anti-black feelings. Refusing to legalize slavery, they nevertheless sought to tightly control or discourage any black population. Of the 188 blacks listed in the 1840 U.S. Census, 16 were categorized as "slave." The remainder lived under some form of servitude although they were disguised under the enumeration label of "laborer," "miner," or "domestic." Several prominent politicians openly held slaves, including the second territorial governor, John Chambers, Territorial Secretary O.H.W. Stull, and Congressional Delegate George W. Jones.

Enslaved or legally free, black Iowans were subject to numerous discriminatory restrictions. The most blatant example was the "Act to Regulate Blacks and Mulattoes," approved by

Upper: Runaway slave Lucy would have had few rights in Iowa Territory even if she had been free. Lower: Portion of freedman's bond for free blacks Francis and Maria Reno. The \$500 bond, promising orderly conduct, was required of all free blacks who lived in Iowa Territory.



RUNAWAY on Sunday, the 31st of May, 1846, from the subscriber, living in Waterloo, Clark county, Mo., a Negro woman named LUCY, about 36 years old, very stout and heavy made, very black, very large feet and hands; had on when she left a Blue Calicoe dress and a Sun Bonnet; no other clothing. It is believed she will be conducted to the Territory of Iowa, in the direction of Keosauqua, or beyond that place, to a settlement of free negroes, that was set free by a Mr. Miers, living in Tully, Lewis county, Mo., some years ago. Any person apprehending said slave, and returning her to me, or securing her so that I can get her again, I will pay a liberal reward, and pay all reasonable expenses. Give information to Daniel Hines, Keosauqua, or James F. Death, Farmington, I. T. JOHN DEDMAN. June 6, 1846. n21-3w

The Condition of the above Obligation is such that Whereas the Board of Commissioners of the said County of Johnson & Secretary of Iowa have required that the said Francis Reno and Maria Reno colored persons as aforesaid, should enter into Bonds with Security as required by the Laws of this Territory Regulating Blacks and Mulattoes" Now if the said Francis & Maria, shall not at any time become chargeable to the said County of Johnson ~~and~~ any other County in this Territory, and shall at all times conduct and behave themselves in an Orderly and Lawful manner, then this Obligation to be

the first legislative assembly on January 21, 1839. Within three months all designated residents had to obtain a "fair certificate . . . of his or her actual freedom" in order to remain in the territory. The document had to be accompanied by a five-hundred-dollar bond as a guarantee to the county commissioners that the individual would not commit any crimes or become a ward of the government. Local officials could, if necessary, "hire out" the individual "for the best price in cash that can be had" (the wages were then paid directly to the county treasury toward the five-hundred-dollar bond). Blacks were denied suffrage and militia service, and the legislature voided interracial marriages and disallowed a black's court testimony against any white. Likewise, an 1842 statute specifically excluded blacks and mulattoes from using poor relief acts "to gain legal settlement" in the territory (without legal settlement one was not eligible for such support mechanisms as public assistance and residence in a county "poor house").

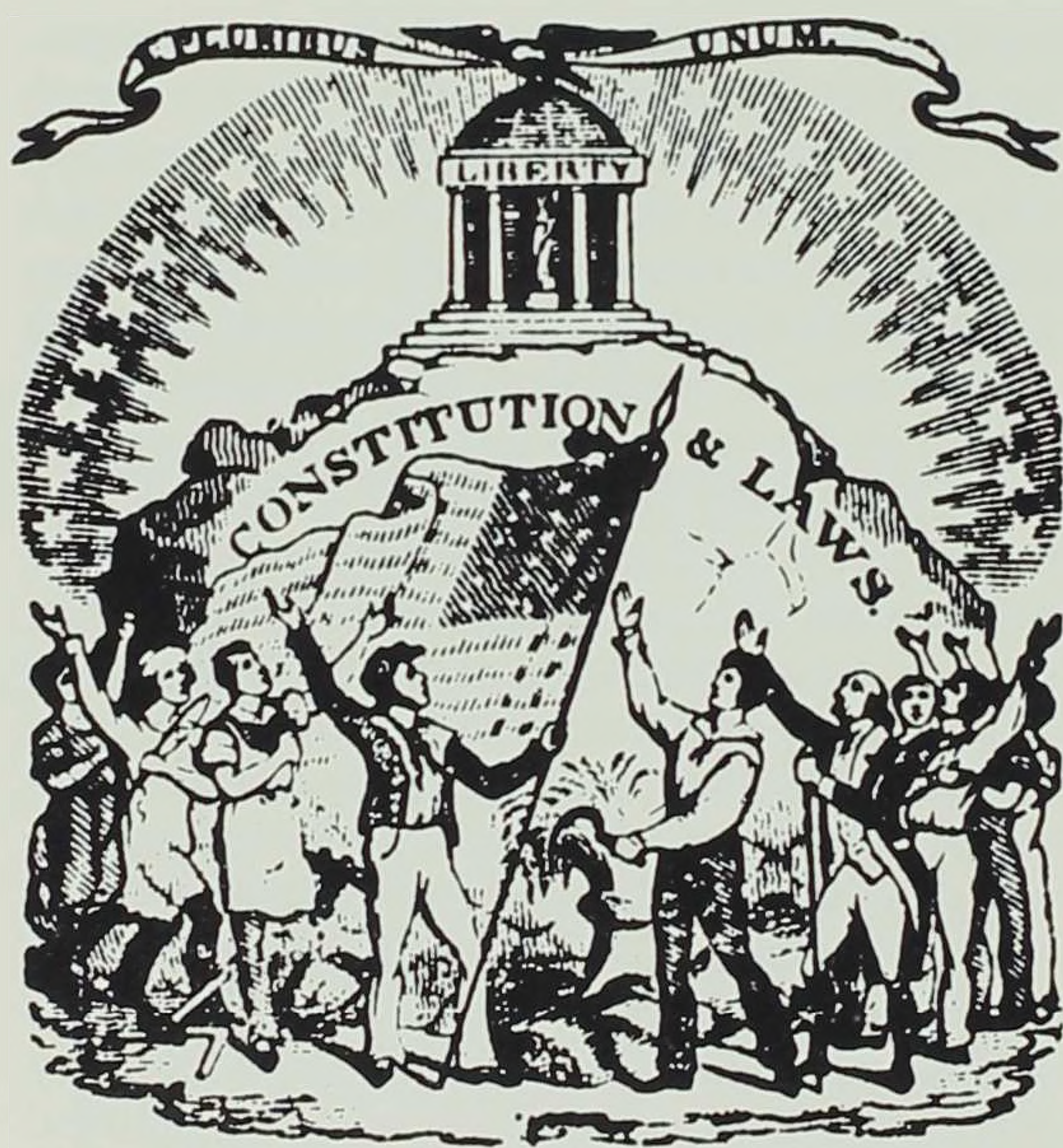
NO SINGLE ISSUE dominated territorial politics as much as did admission to the Union. Already in his second annual message to the legislature in November 1839, Governor Lucas encouraged rapid movement toward drafting a constitution and forming a state government. He argued that many neighboring states had experienced accelerated economic growth after their territorial status had ended. Lucas also proposed generous state boundaries — west to the Missouri and Big Sioux rivers, then north to the St. Peters (Minnesota) River before joining the Mississippi at the present site of St. Paul. Legislators declined to pursue these matters, insisting that statehood would not guarantee prosperity but would increase the tax burden on residents.

When John Chambers, a Kentucky Whig, was appointed territorial governor in 1841, he also encouraged seeking admission to the Union. He urged the assembly to ascertain "the wishes of the people" regarding statehood by asking them to vote on holding a constitutional convention. Ironically, Whigs in Iowa

led the opposition against statehood, anticipating increased taxation, limited resources, and the political immaturity of the citizenry. Democrats, on the other hand, supported statehood, forecasting increased migration, generous federal appropriations for internal improvements, and voter eagerness to select their own governor. An Iowa City editor in July 1842 believed that statehood would attract thousands of settlers "desirous of making their homes with us [but] are deterred by what they deem the unsettled state of things incident to a Territorial government." Nevertheless, in the August 1842 election, a majority of the voters in each county rejected the call for a constitutional convention. The voters had rejected this step toward statehood primarily because of the financial burden a new state would have to assume (the federal government paid for many territorial services), and because the political parties were not yet very well organized.

Within fifteen months lawmakers and voters had changed their minds and authorized selection of convention delegates. (The change was probably because the Democrats were now better organized, and because Congress had begun to distribute funds from land sales back to the states, thus eliminating the financial-burden argument.) Seventy-two delegates, dominated by Democrats, met in Iowa City from October 7 to November 1, 1844. The constitution they drafted in those three weeks was based on the individual freedoms and government responsibilities guaranteed in the U.S. Constitution. It included a lengthy bill of rights and supported existing territorial statutes on suffrage, banks, education, and county organization. The generous boundaries that Lucas had suggested earlier were included in the final draft submitted to Congress.

In Washington, debate revolved around the necessity to admit Iowa concurrent with Florida, a slave state. President John Tyler signed the legislation approved by Congress, but it included significantly reduced northern and western Iowa boundaries. (The southern border would continue to be the subject of an ongoing squabble with Missouri.) Back in Iowa, in an almost unprecedented action, voters by a narrow margin rejected the 1844 constitution as modified by Congress. Voting



"no," largely because of the decreased boundaries and Whig opposition to prohibition of banks, Iowans lost this chance at statehood.

The highly partisan political rhetoric resumed immediately, as did pressure from Governor Chambers and his Democratic successor in 1845, James Clarke. Consequently, a second constitutional convention met in Iowa City, May 4-19, 1846. The issues of banks and boundaries dominated the debates. Using the previously proposed constitution as a model, the majority Democrats doubled the guber-

natorial term to four years, eliminated the office of lieutenant governor, increased the term of judges, and prohibited banks that circulated paper currency. Most significantly, a compromise was reached on the northern boundary question. This opened the way for approval in Iowa and in Congress, and on December 28, 1846, President James K. Polk signed the bill admitting Iowa into the Union on an equal base with all other states.

LOOKING BACK over the 1830s and 1840s, permanent Euro-American settlement in eastern Iowa in 1833 had led almost immediately to demands for governmental organization. After being attached to Wisconsin Territory, Iowans had sought separate political status. Voters had quickly elected a legislature, and thus began more than eight years of debate, conflict, and compromise that resulted in statehood. During this brief political apprenticeship, territorial citizens had sought and accepted a regulated society built upon a foundation of basic rights and privileges guaranteed by the U.S. Constitution, Northwest Ordinance, and various Congressional enactments. Like residents of any democratic community adopting representative government, Iowans willingly abandoned elements of individual choice in their lives for the benefits of a society based on duly ordained and established law. □

NOTE ON SOURCES

In this abbreviated list, the publisher is the State Historical Society of Iowa unless another is noted. Complete bibliography may be requested. On territorial organization, see John E. Briggs, "The Birth of the Territory," *Palimpsest* [henceforth, *Pal*], (Jan. 1928); Kenneth E. Colton, "Iowa's Struggle for a Territorial Government," *Annals of Iowa* (July 1938); and Jacob A. Swisher, "The Organic Act," *Pal* (June 1938). On territorial legislature, see Briggs, "History and Organization of the Legislature in Iowa," in Benjamin Shambaugh, ed., *Applied History* (1916), 3:3-135; Carl H. Erbe, "The Legislative Department . . .," *Iowa Journal of History and Politics* (April 1925); Jack T. Johnson, "Second Legislative Assembly," *Pal* (Feb. 1940); and Hugh E. Kelso, "The Extra Session of 1840," *Pal* (April 1941); and Swisher, four *Pal* articles (Feb. 1939, April 1941, Feb. 1942, and May 1944). On constitutions, see Erbe, "Constitutional Provisions for the Suffrage . . .," *IJHP* (April 1922); Shambaugh, *The Constitutions of Iowa* (1934) and *Fragments of the Debates . . .* (1900); and Swisher, "A Constitution in the Making," *Pal* (Oct. 1944). On governors, see Johnson, "James Clarke," *Pal* (Dec. 1939); Thomas McMullin and David A. Walker, *Biographical Directory of American Territorial Governors*

(Westport, Ct.: Meckler, 1984); John C. Parish, *John Chambers* (1909) and Robert Lucas (1907), Shambaugh, *Executive Journal . . .* (1906) and *Messages and Proclamations of the Governors of Iowa*, vol. 1 (1903). On political parties, see Louis Pelzer's two *IJHP* articles (the Democrats, Jan. 1908; the Whigs, Jan. 1907). On boundaries, see Erik M. Eriksson, "The Boundaries of Iowa, *IJHP* (April 1927) and "The Honey War," *Pal* (Sept. 1924); Carroll J. Kraus, "A Study in Border Confrontation," *Annals* (Fall 1969); and Ben H. Wilson, "The Southern Boundary," *Pal* (Oct. 1938). On banking, see Erling A. Erickson, *Banking in Frontier Iowa, 1836-1865* (Ames: ISU Press, 1971). On slavery and black Iowans, see James Connor, "The Antislavery Movement in Iowa," *Annals* (Summer, Fall 1970); Robert R. Dykstra, "Dr. Emerson's Sam," *Pal* (May/June 1982) and "White Men, Black Laws," *Annals* (Fall 1982); and Joel H. Silbey, "Proslavery Sentiment in Iowa," *IJHP* (Oct. 1957). For broad overviews, see Leland L. Sage, *A History of Iowa* (Ames: ISU Press, 1974); Alice E. Smith, *The History of Wisconsin . . .* (Madison: State Historical Society of Wisconsin, 1973); and Joseph F. Wall, *Iowa, a Bicentennial History* (New York: W.W. Norton, 1978).